

**UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE
UNITED STATES FOREST SERVICE**

The appellant respectfully appeals the following Decision Notices and FONSIIs

- I. Amendment #22 to the Nantahala and Pisgah National Forests
Revised Land and Resource Management Plan
Managing Recreation Uses on the Upper Chattooga River
DATED: August 25, 2009
- II. Amendment #1 to the Sumter National Forest
Revised Land and Resource Management Plan
Managing Recreation Uses on the Upper Chattooga River
DATED: August 25, 2009
- III. Amendment #1 to the Chattahoochee-Oconee National Forests
Revised Land and Resource Management Plan
Managing Recreation Uses on the Upper Chattooga River
DATED: August 25, 2009

By
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This is a notice of appeal filed pursuant to 36 CFR 219.14(b)(2) on October 15, 2009.

The appellant contends that the FONSIIs were justified using a deficient Environmental Assessments.

The scope for the published Environmental Assessment meets neither the agency nor NEPA guidelines; it does not even comply with the direction outlined within the 2004 Appeal Decision. The deficient scope of the 2009 Assessment is then used as justification for a Finding of No Significant Impact (FONSI); a FONSI conclusion predicated on the flawed assessment would be inconclusive and deficient. The Assessment remains deficient due to the confined scope which eliminated data collected from current visitors, ignored the majority of the designated resource and ignored the benefits from the previous policies. The assessment used to justify the agency action simply does not “*rigorously explore*” and “*objectively evaluate*” the affects of expanding boating as required under 40 C.F.R. § 1502.14(a).

The Visitor Capacity Analysis and Assessment has simply mimicked the scope of assessment demanded by the kayak access lobby, American Whitewater (AW)¹. Like a spoiled child, AW’s arguments remain completely focused on themselves and the small section of the Chattooga Watershed protected from boating overuse; this while ignoring numerous boating opportunities nearby and being oblivious to the effects boating has had on the many other visitors and the wildlife.

After AW’s 2004 AW appeal and their AW’s 2006 lawsuit against the USFS, it is understandable that the Forest Service would want to appear objective in an attempt to avoid the howls of a litigious kayak access lobby. However, the hiring of a consultant recommended by American Whitewater, that used a study methodology co-authored by AW, to write a recreational analysis that formed the basis of the 2009 Environmental Assessment, did not provide an objective assessment that was equitable for the majority of other Upper Chattooga users.

The Environmental Assessment is deficient due to ...

- The questionable objectivity of the recreational consultants and associated methodology.
- The narrow geographic scope biases the objectivity of Environmental Assessment.
- The lack of beneficial effects related to the current policy.
- The EA limits consideration of the social effects to the non-paddler.
- Origins of the encounter standards and encounter counter methodology

The objective behind an Environmental Assessment must be broad-based and not so narrow as to dictate a foregone conclusion.² By mimicking AW’s egocentric arguments outlined in their 2004 appeal, the EA ignores the larger portion of the designated WSR that allows unlimited boating, it ignores the benefits the current policy has had on historic visitors, and finally remains deficient in assessing the impacts boating will

¹ See 5-11-05 letter to Mr. Jacobs of the USFS from Patton Boggs representing American Whitewater.

² The USFS may not define the goals of its projects so narrowly that only its preferred alternative will meet those goals, *see City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997) (“The stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives and an agency cannot define its objectives in unreasonably narrow terms.”) [*EPIC v. USFS*, 9th circuit, 2006]

have to the current environment of the Upper Chattooga. Since the FONSI is based on the skewed assessment, the decision remains suspect because it fails to meet NEPA standards of objectivity and fails to assess the “relevant factors” and “important aspects” of the agencies actions of expanding boating.³

Courts have ruled “*that the scope of an EIS is proper, is important to the required determination whether the agency in good faith objectivity has taken a hard look at the environmental consequences of a proposed action and at alternatives to that action*” [Save Our Sycamore v. Metropolitan Transit Auth., 576 F.2d 573, 575 (1978)]. Utilizing a biased analysis, which avoided assessing most of the impacts associated with a policy which expands boating, is certainly not considered a “hard look” nor is allowing the kayak access lobby to frame the recreational analysis considered in “good faith objectivity”.

Simply put, a Finding Of No Significant Impact requires that the assessment be objective and comprehensive. The 2009 *Environmental Assessment; Managing Recreation Uses the Upper Chattooga River* is neither.

Regards

Michael Bamford

The relief sought is included within the text of the Appeal in [BLUE](#)

This appeal’s goal is to correct major errors in the Assessment prior to implementation of an Adaptive Management strategy, and to insure that all uncertainties associated with EA assumptions are clearly highlighted as required under the NEPA guidelines.

³

The court reviews the merits of an agency decision under the standards set forth in the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(2)(A). See 28 U.S.C. § 1491(b)(4) (“In any action under this subsection [like expanding kayaking], the courts shall review the agency’s decision pursuant to the standards set for in section 706 of title 5.”). In *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), the US Supreme Court explained: *Section 706(2)(A) requires a finding that the actual choice made was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.* Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency. *Id.* at 416. The United States Supreme Court also has held that the trial court’s APA review should focus on the factual basis for the agency’s action in order to ensure that it is supported by adequate facts on the record. See *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Ins. Co.*, 463 U.S. 29, 43 (1983) (“[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”).

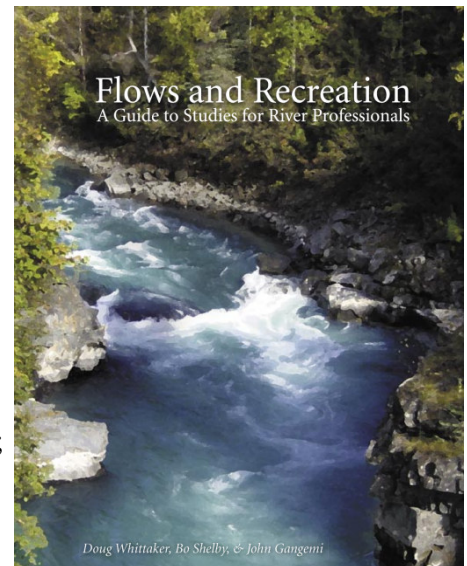
I. Objectivity of the Recreational Consultants and Associated Methodology.

Doug Whittaker and Bo Shelby own Confluence Research & Consulting (CRC); this consulting group was hired to conduct the Chattooga's recreational Flow Study and publish the 2007 Chattooga VCA final report, *Conflict and Analysis on the Chattooga*. The 2009 Environmental Assessment draws all its' conclusions regarding recreation exclusively from CRC's Chattooga reports. All public comments highlighting the flaws in the outsourced reports were ignored, and no reports were ever changed.

The EA failed to comment on the relationship Whittaker, Shelby and CRC have with the kayak access lobby (American Whitewater). AW recommended CRC to the Forest Service numerous times⁴ prior to being hired for the 2007 Chattooga study; this alone would suggest an over familiarity with the kayak access lobby.

In addition to the recommendations, the analysis methodology selected to study recreational flows on the Chattooga, was co-authored with American Whitewater. The *Flows and Recreation* guide was jointly authored by Whittaker, Shelby and John Gangemi; Mr. Gangemi was then a director of American Whitewater (see attachment A). Gangemi's ties to American Whitewater is included in the publication's credits. The guide was copyrighted in October of 2005, almost eighteen (18) months after AW filed their 2004 Appeal on the Chattooga. Finally, AW assisted with distribution and printing of the guide; the inside cover notes "*Thanks to American Whitewater for printing and distribution support*"⁵

Mr. Whitaker's published a more comprehensive flow study guide in 1993⁶, than the 2006 guide co-authored by the kayak lobby. The 1993 publication suggests fishability is not determinable by examining flows alone, and recommends including other river-oriented activities in recreational flow study; but all this detail was ignored during the Chattooga capacity analysis, despite opposition. Alternatively, the 2006 guide (AW's) focuses assessment on the whims of paddlers while trivializing the needs of other users and the wildlife.



Flows and Recreation

A guide to studies for river professionals

Doug Whittaker, Ph.D.
Confluence Research and Consulting

Bo Shelby, Ph.D.
Oregon State University

John Gangemi
American Whitewater / OASIS

October 2005

⁴ AW's Appeal of the 2004 RLMP, pg 45, 3-10,& 3-17, see also 2002 letter to USFS from AW signed K. Colburn

⁵ 2006, *Flows and Recreation*, Whittaker, Shelby, Gangemi, NPS copyright 2005

⁶ Whittaker, D., Shelby, B., Jackson, W., Beschta, R. 1993. *In stream Flows for Recreation: A Handbook on Concepts and Research Methods*. U.S. Dept. of Interior: National

The USFS were made aware of the concerns regarding Whittaker's objectivity in April of 2006, July 2006, June 2007 and in August 2008 (see first letter on right).

During Mr. Whitaker's first public meeting in July of 2006, he proclaimed that acceptable flow levels for fishing and boating do not overlap; reiterating AW's appeal claims. This hypothesis was made before gathering any recreational data on the Chattooga. Whittaker, and CRC, proceeded to conduct and influence the Chattooga study seeking to validate this claim. At first, the boater and angler recreational flow study concluded: ***"it is clear that acceptable ranges for the two groups overlap."***⁷; but what was *clear* at first became hugely distorted by the time the final assessment was issued. The flow study also found that both anglers and boaters rated the only flow level studied (400cfs) as a six, out of a possible seven (6 of 7). These collected facts may have caused an objective consultant to rethink his original hypothesis, but mere facts would not deter CRC from proving their theory.

In the *Conflict and Analysis on the Chattooga* (2007 Whittaker, Shelby), CRC published that the "optimal flow" (defined as the median flows rated 7 out of 7) for boaters, did not overlap with fisherman "optimal flows". CRC then used the less-than-perfect criteria to hypothesize that fewer anglers would be at the Chattooga river when flows exceed "perfect" levels of 325cfs at the BF gauge. Again, CRC's "assumption" contradicts the collected facts that show angler use along the GA Chattooga remains popular up to 450cfs and that anglers still visit the Chattooga when the water is as high as 750cfs.⁸ CRC's highly biased assumptions are presented as "findings" and included in the final EA. Many of the Chattooga angler behavior assumptions contradicts CRC's previously published literature (see Attachment A-5)

May 12th 2006

Dear Mr. Cleaves

I am concerned about the selection of Doug Whittaker as a USFS consultant. Mr. Whittaker appears on American Whitewater's list of suggested experts in their 2004 Appeal of the Chattooga WSR RRLMP (see Appeal pages 3-10 and 3-17). Additionally, AW notes their suggested experts "have shown boaters have no quantifiable impacts"; since every action has an opposite reaction, an inability to measure that reaction shows a lack of ability, or desire, to measure impact. My primary concern is that utilizing any of the AW recommended consultants shows a bias toward boating.

Since boating consultants are already included on the study design team, what are now needed are other non-boating river experts including Fish & Wildlife experts, biologists and botanists to help objectively review environmental impacts on the Chattooga. We should also utilize a recreation specialist that does not specialize in flow studies for Whitewater boating. This recreation specialists could help objectively establish some study parameters to measure the social impact of boating on the other visitor's activities of swimming, hiking, birding and fishing. Looking at the social impact from the perspective of each activity will help design an objective study.

Finally, since finding unbiased boating participants to conduct the flow study may be impossible, I suggest mixing the expert panel up between hired consultants and local stakeholders in favor of the current protective restrictions. Any "expert" whitewater boater did not become an expert by having a neutral position for the sport; any boater at the required skill level to maneuver the upper Chattooga has been paddling for many years.

Sincerely,

Michael Bamford

⁷ Pg 42, 2007 *Upper Chattooga, Expert Panel Field Assessment Report*, Berger Group, USFS

⁸ page H-14 Francis Marion Sumter 2004 FEIS

In addition to misrepresenting angling, CRC's report ignored collecting any data from all other visitors to the Upper Chattooga; this excluded the majority of Recreational ORVs (day hikers, picnickers, swimmers, wildlife viewers) from data collection during the recreational flow analysis.

Whittaker's 1993 flow study manual admits that "*a number of attributes (particularly those indirectly affected by flow) are crucial to the quality of flow-enhanced activities such as wildlife viewing, hiking, or riverside camping and they should be explored as well.*"⁹; but these attributes *crucial to the quality of non-paddlers* were ignored in CRC's Chattooga report. By avoiding data collection from most current visitors, CRC was free to hypothesize effects on non-paddlers. CRC's analysis then makes conclusions for non-paddlers based on their own assumptions, opinions and the literature that they selected for consideration. Any literature citing recreational, or wildlife, conflict with boating (including the 1976 information from the Lower Chattooga), was predictably ignored in CRC's *2007 Conflict and Capacity Analysis Report*.

The objectivity of the citations referenced to "corroborate" conclusions about recreations within CRC's *2007 Conflict and Capacity Analysis Report* is dubious. Over 50% of the references cited to "authenticate" recreational assumptions were citations from Whittaker and Shelby's previous studies (see [Attachment2](#)). An additional 25% of the cited references are authors that have co-authored work with Whittaker or Shelby, and some citations were just American Whitewater published propaganda. Basically, CRC cites themselves, the kayak access lobby or close colleague for most recreation related assumptions used in the Chattooga VAC reports. An author citing his previous assumptions in an attempt to validate conclusions, does not meet the standard for objectivity required under NEPA mandates.

The assessment of environmental effects from expanding boating are predicated on the boater information supplied by CRC. Predictably, CRC underestimates boating impacts by either a failure to recognize them, or by understating the associated consequences. This underestimation has a ripple effect throughout the EA, because all other sections draw conclusions from the provided boating information.

One example of the ripple effect caused by CRC's underestimation, can be seen the EA Section 3.1.2 Soils. Using the 2007 CRC report, the EA suggests that only 2 small designated portage trails will be needed for the sensitive Chattooga Cliffs reach, this caused the soil, biological, vegetation and habitat sections of the EA to conclude riparian impact to be light. However, the Expert panel reported boaters

⁹ Pg 63 Whittaker, Shelby, Jackson, Beschta. 1993. *In stream Flows for Recreation: A Handbook on Concepts and Research Methods*. NPS

had to traverse the banks as many as 12 times to scout and portage upcoming rapids¹⁰; this would require far more impact than the two small trails assessed. The EA based trail needs on data collected during the boating study; but Whittaker's previous publication notes that these are adequate for assessing trail needs. Since the expert panels were done by "experts" (mostly AW members) during a single flow, the new trail needs for all skill levels and at all water levels, in all types of crafts remains largely unknown.

- i. The boater recreational analysis was conducted at flows just under 400cfs, while the proposal plans to allow boating at flows above 450cfs. Since portage needs shift with changing water levels, the actual trail needs for portaging and scouting higher flows remains purely speculative. Higher flows will force portaging kayakers to create new user-trails above the bedrock damaging the rhododendron thickets and trampling the fragile banks; this violates the Objectives Sumter for Stream management zones outlined in the 2004 Sumter FEIS. Whitaker warns of limitations of single flow assessments on page 16 of *Flows and Recreation* guide.
- ii. Since only expert kayakers were allowed to participate in the 2007 flow study, no data exists for beginners, intermediate or even advanced paddlers. According to Mr. Whittaker's study methodology, "*flow-boater relationships will defer for boaters with different skill levels*"¹¹. Since all trail assumptions were based on *expert* paddlers (those requiring the fewest number of riparian trails), the EA remains deficient and the decision speculative
- iii. Since only single occupancy crafts were used during the flow study, trail needs of larger tandem-canoes and inflatable rafts remains undocumented. Again Whittaker ignored his own methodology which suggests type of craft will effect boater needs (1993 guide pg 63).

CRC's underestimation of new trail requirements gets compounded throughout the assessment as misleading information on boating is used to assess the effects boating will likely have on the riparian environment. Again, CRC ignores their own methodology in an attempt to lesson boater impacts and mislead analysis. (for more see Attachment -3)

Finally, that the encounter estimates and standards were orchestrated by CRC is flagrant abuse of discretion. CRC participated in "Use Estimation Workshop", and co-authored the workshop's summary, this estimated current use levels for visitors. Then, according to page 120-122 of the Assessment, CRC provided all the "guesstimated" for boating usage¹². These "guestimates" are then used to predict encounters (ref: pg 179 of the EA). Therefore, CRC (a consultant from Alaska, with ties to the kayak access lobby) provided all Upper Chattooga encounter data through these very unscientific "guestimates".

Setting of the encounter "standards" is even more dubious. The LAC process was supposed to use the publically collected desired conditions to develop resource "standards" ; Chattooga anglers

¹⁰ 2007 Expert Panel Study Report Pg 29, expert panel members required as many as 5 portages and 7 incidents of scouting

¹¹ Pg 63 Whittaker, Shelby, Jackson, Beschta. 1993. *In stream Flows for Recreation: A Handbook on Concepts and Research Methods*. NPS

¹² "We have "guesstimated" the total number of boaters that might use the Upper Chattooga" pg 36 2007 Conflict & Capacity

wanted “no new fishing disturbances” and hikers wanted to experience a section of the Chattooga without boats.¹³ Pg 129 of the EA describes the desired conditions for current users as follows.

“Currently, existing users are able to experience their desired recreation opportunity on the upper Chattooga whether they seek solitude, campsites near the water, a variety of hiking trails, fishing opportunities, or just an opportunity to enjoy the river environment, all without the possible interference from boats.”

However, the encounter standards used in the final EA do not appear aligned with the desired conditions of Chattooga visitors, but rather just more guestimates. Page 121 of the EA notes: “*Studies in wilderness and backcountry settings show that users agree encounter levels should be low. In general, encounter tolerances in wilderness are about four–five per day*” this encounter statement again cites CRC’s own 2007 report which cites some remote anecdotal observations, not even actual studies.¹⁴

Oddly standards for the North Carolina section of the Chattooga already exist and are ignored. Page eight of the EA notes that Nantahala encounter limits are “80% chance of 0 encounters per day at the river, 80% chance of less than 3 encounters per day on secondary wilderness trail and 80% of less than 5/day at access points like Bull Pen. The new standards are triple the current standards. Why CRC recommended encounter standards that have become part of the 2009 decision is also dubious.

Now the 2009 Environmental Assessment relies solely on CRC’s 2007 reports to validate all recreational conclusions.¹⁵ Even though the CRC did not conduct onsite analysis of Chattooga recreational conflict, but rather made subjective conclusions based on biased citations. Further, Amendment #1 of the Sumter RLMP decision lists the prejudicial report as justification for concluding a finding of no significant impact (FONSI). Incomplete reports do not justify a FONSI or the Decision.

A judicial review for an agency decision under the standards set forth in the Administrative Procedures Act (“APA”)¹⁶ note, “In any action under this subsection [like expanding kayaking], the courts shall review the agency’s decision pursuant to the standards set for in section 706 of title 5.”). In *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), the US Supreme Court explained:

Section 706(2)(A) requires a finding that the actual choice made was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. *Id.* at 416.

¹³ Data collected during the December, 2005 public meeting as part of the Visitor Capacity Analysis/LAC.

¹⁴ Pg 64, 67-69 of the 2007 *Capacity & Conflict Report*

¹⁵ Whitaker Shelby and CRC reports are the only references used in the recreational section(3.3.1) of the 2009 EA.

¹⁶ 5 U.S.C. § 706(2)(A). See 28 U.S.C. § 1491(b)(4).

Utilizing the Kayak lobby's methodology along with their recommended consultant to form the basis for the EA's comparative analysis, appears to be arbitrarily and capricious as well as an abuse of agency discretion. What is most disturbing is that numerous "*relevant factors*" highlighted during public meetings were either never studied or trivialized through erroneous assumptions made within the outsourced Capacity Analysis published reports.

The CEQ define *Objectivity* as "*a measure of whether disseminated information is accurate, reliable, and unbiased and whether that information is presented in an accurate, clear, complete, and unbiased manner.*"¹⁷ In place of a "*clear and complete*" recreational analysis, AW's preferred consultant ignored the visitor capacity data collected prior to his hire, turned the ordered Visitor Capacity Analysis into a recreational flow study, then published his own opinions and assumptions as a Recreational Analysis of the Upper Chattooga. The effects FROM expanding boating ON current visitors, wildlife and the riparian environment are based solely on the 2007 report published by AW's preferred consultant.

NEPA requires that "*Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses*"[40 CFR § 1502.24]. This clearly has not been done.

That AW recommended a recreational consultant to assess kayak impacts in their appeal, would normally disqualify the consultant from consideration. That AW co-authored the methodology used for the Chattooga capacity analysis (after filing their appeal), would again be prejudicial. That the outsourced consultant openly utilized biased references to justify his report conclusions, invalidates all his reports. That the USFS has allowed the reports to be published and now bases a FONSI on the recreational expertise of CRC, is unethical and illegal. Finally, that AW demands that "their" expert consultant's report be used "exclusively" to set river policy, only verifies the ridiculous bias and prejudicial nature of Sumter's 2009 Environmental Assessment.

Request for Relief:

- **Review all conclusions within the Decisions and Sumter's 2009 Environmental Assessment that are unsupported by objective facts. Expand Monitoring in the adaptive management plan to either substantiate unsupported claims in the decision or return the Upper Chattooga to the 1985 management policy.**

¹⁷ 2002 (Vol. 67 *Federal Register* No. 36, at 8452, CEQ guidelines

II. Geographic: A 19 Miles Segment Of The Chattooga Have Been Reviewed In Isolation.

History: The reason why the Chattooga WSR was zoned to balance recreational use was captured in the 2007 Historical review of Chattooga management policy. Quoting the original 1976 management plan, the review¹⁸ found “*the recent increase in floaters using the river has had a detrimental effect on the fishing experience. Conflicts have developed on certain sections of the river where floaters and fisherman use the same waters*” (p. 11819 Federal Register 76, also pg 89 of the draft EA)

In Federal court the USFS explained the historical rational for the zoning policy as a need to balance overall user-types on the Chattooga. The USFS noted:

“although current levels of all types of uses create some problems, uncontrolled future use would probably result in safety hazards and a lowering of the quality of the recreation experience and when need warrants, this will be prevented by the establishment of regulations limiting size, number, type, etc., to provide optimum use.” Id. at 11,850.

In furtherance of the objective to strike an optimum balance of recreational uses and avoid user conflicts on the entire Chattooga... floating above Highway 28 was to be prohibited, to make certain that floating was accommodated on the river, no limitations or restrictions were placed on floating downstream of Highway 28, consisting of over 36 miles of the 57 mile river corridor. The Forest Service determined that this large portion was the most generally desirable, physically suitable, and highly used area for floating on the river. By exercising its discretion to manage the river this way, the Forest Service was able to reasonably accommodate two specific conflicting recreational uses, benefiting the individuals who wished to float the river and those who wished to experience quality trout fishing in the only areas of the river that offered that experience.”¹⁹

It is clear that the recreational zoning established in 1976 was an attempt by the USFS to optimize the balance among conflicting visitor activities. The 1985 RLMP ,now being modified, notes that “*Efficient administration*” requires the ability to “*balance public needs for a limited river resource in the spirit of the congressional legislation.*”²⁰ This 1985 FEIS statement helped justify the numerous restrictions placed on motorized vehicles, horseback riding, tubers, bikes, as-well-as boating above highway 28.

Overtime, anglers, birders and hikers, were displaced from the lower Chattooga²¹, while increases in paddling dominated the resource²²-to a near monopoly- below highway 28. The USFS’s had instituted a passive management policy which displaced lower Chattooga visitors looking for a remote river visit, the kayak access lobby appealed this 1985 policy that sought to accommodate a variety of desired experience.

¹⁸ Chattooga River History Project; Literature Review and Interview Summary, 2006, Sumter USFS

¹⁹ AW v. USFS Case 2:06-cv-00074-WCO Document 11 Filed 07/07/2006 Page 4-6 of 28

²⁰ pgM-5, 1985 Sumter USFS FEIS

²¹ Pg 113, 2009 referencing 1979 Craig report.

²² 94% of the visitors to the lower Chattooga are visiting for boating (rafting, kayaking, Canoeing, and tubing). Approximately 45% rafting and 47% canoe & kayaking. Pg 20 The Chattooga River Study 2003 published by American rivers with the NPS.

Like spoiled children, the kayak lobby wanted the USFS to ignore the lower 2/3rds of the designated Wild and Scenic River, and only consider where the myopic kayakers did not already have unlimited access.

By using the recreational zoning boundaries, which were established to balance overall visitor use. as a basis for isolating a portion of the resource, has significantly skewed the capacity analysis and now the EA.

The Decision for Appeal [#04-13-00-0026] (Decision) directed Forest Service to “*conduct the appropriate visitor use capacity analysis, including non-commercial boating use, and to adjust or amend, as appropriate, the RLRMP to reflect a new decision based on the findings*”²³ The Decision did not limit the scope of assessment (or potential policy remedies) to only the Upper Chattooga as the assessment incorrectly published in the *Need for Proposed Action*” section. Rather, the decision defines the geographic scope for the capacity analysis as the “*Chattooga Management Area #2 in the Sumter National Forest RLRMP*”. The referenced 2004 RLRMP defines Management Area #2 as the entire “180,000-acre watershed” spanning three states.²⁴ For added clarity, the Decision directed the Sumter Forest Service to consider “*the diversity of river recreation opportunities available within the geographic region*” as required by[FMS 2354.4]. The geographic scope of the ordered Visitor Capacity Analysis included consideration of boating opportunities on the Lower Chattooga corridor as-well-as all nearby creeks. Unfortunately, the Visitor Capacity Analysis and now the Environmental Assessment have isolated the Upper Chattooga for assessment.

The Forest Service Manual [2354.03] further directs the agency to “*plan and manage river recreation in a context that considers the resource attributes, use patterns, and management practices of nearby rivers.*” Regulations [36 CFR 219.21.a] mandate the Forest Service evaluate “*recreation opportunities already present and available ... with the aim of reducing duplication in meeting recreation demands.*” Therefore, planning mandates insist the agency avoid a fragmented review of the resource and expects assessments consider the entire geographic region during the planning of recreation policy. Yet the Environmental Assessment has been mistakenly constrained to the river segment that currently limits paddling as demanded by American Whitewater.²⁵ The EA fails to consider the sixty-five miles of boatable creeks that currently allow boating within the Chattooga watershed (or Management Area #2).

The entire Visitor Capacity Analysis focused on the upper third of the designated Chattooga Wild and Scenic River. Neither “*the diversity of river recreation opportunities available within the geographic region*” nor “*reducing duplication of recreational opportunities*” is even considered in the assessment.

A list of nearby boatable streams totaling over 500 miles is included (see Attachment 4).

²³ Record of Decision for Appeal (#04-13-00-0026 American Whitewater)

²⁴ 2004 Sumter FEIS page 10 “*This 180,000-acre watershed includes the 122,192-acre management area comprised of public lands in National Forest management located within the Blue Ridge Mountains and upper piedmont of Georgia, South Carolina, and North Carolina. The Chattahoochee-Oconee National Forests in Georgia, Nantahala National Forest in North Carolina, and the Sumter National Forest in South Carolina share management of the watershed, with the Sumter National Forest in charge of administering the river uses associated with the Chattooga Wild and Scenic River Corridor.*”

²⁵ See 5-11-05 letter to Mr. Jacobs of the USFS from Patton Boggs Attorney for American Whitewater.

Large storms are necessary to provide sufficient flows for kayaking the Upper Chattooga, and most nearby creeks will, of course, swell to kayak-able levels simultaneously. Therefore, under current policy, the Chattooga North Fork remains the **only** local creek without kayakers during higher flow volumes; this provides a unique alternative for visitors and wildlife seeking a disturbance-free river. Expanding kayaking upstream on the Chattooga, just further duplicates kayaking opportunities available in the region during these high-flow times; this at the expense of the unique high-water experience currently available to non-boaters and wildlife.

One Francis-Marion-Sumter management goal is to “*Provide a spectrum of high quality nature-based recreational settings and opportunities that reflect the unique or exceptional resources... [and] to shift limited resources to those opportunities*”²⁶ Further expanding kayaking through a popular trout stream, numerous swimming areas, scenic river vistas and an ever shrinking wildlife habitat while two-thirds of the river is already open to kayaking, would be in direct conflict with the listed forest management goal and published guidelines²⁷. The limited geographic scope avoids considering the benefits from previous policies which were established to balance visitor usage throughout the Chattooga watershed. Nearby kayaking “runs” within the Chattooga watershed provide numerous and varied recreational opportunities for whitewater sport from steep creek boating to leisurely floats; the impacts from expanding boating must be compared against the diminishment of opportunities currently available throughout the watershed. The Federal Registry²⁸ documented that many anglers have already been displaced from the Lower Chattooga River by paddlers. Expanding boating simply expands the displacement of anglers from the designated Chattooga. Trend assessment of user-conflicts throughout the resource clearly indicates²⁹ kayaking also impacts other visitors throughout the Chattooga watershed and the need to continue the current zone-by-activity management policy that allows paddlers on 2/3rd of the river.

Under [40 CFR § 1504.2], improper “*geographical scope*” is grounds for a referral to the NEPA council, segmenting the designated resource based on current access policy should be reviewed against agency guidelines for resource planning. Similar recreational policy reviews have not isolated the geographical assessment based exclusively on the boundaries that were been previously established to balance river use and accommodate a variety of visitors; this inconsistency ignores the APA guidelines for agency objectivity. Zoning boundaries established during resource-wide planning in order to accommodate diverse visitor interests, was incorrectly utilized to establish the geographic scope for this recreational analysis.

²⁶ 2004 FMS forest goals and objectives , FEIS p 2-22 USFS

²⁷ FMS 1973.3 “Determine the geographic areas that are likely to influence or be affected” by agency policy.

²⁸ The 1976 Development Plan notes “[t]he recent increase in floaters using the river has had a detrimental effect on the fishing experience. Conflicts have developed on certain sections of the river where floaters and fishermen use the same waters.” *Id.* at 11,849.

²⁹ 2005 Chattooga visitor-preference-data collected as part of the Visitor Capacity Analysis.

The environmental effects associated with adding yet another kayaking run during higher water flows must be viewed in the context of all resource opportunities throughout the area; at an absolute minimum this must include the lower section of the Wild and Scenic Chattooga as a designated component of the National WSR system³⁰.

In addition to violating internal policy, NEPA and planning mandates, the skewed assessment scope violates The National Forest Management Act of 1976. NFMA, 16 U.S.C.1600 Sec 6 (f)(3) requires that plans be “*based on inventories of the applicable resources of the forest.*” Since less than 20% of Sumter’s *Management Zone #2* and only 35% of the Chattooga Wild and Scenic River was included in the Environmental Assessment, the inventory of recreational opportunities remains deficient. The Final EA only considered Chattooga recreation above highway 28, which only geographic significant is based on previous policy zoning which sought to balance overall river use.

The skewed assessment scope also violates MUSYA; section two of MUSYA requires the USFS to give “*due consideration*” to the “*relative values*” when balancing uses throughout the resource [16 U.S.C. § 529]. By isolating the only river segment without paddlers during higher flows, the assessment avoids due consideration of the relative values associated with the array of recreational opportunities within the management area. The MUSYA does not suggest a monoculture of paddling be the standard for a resource and is so titled the Multiple Use Sustainable Yield Act.

The limited scope of assessment ignores the effect from previous management policies impact on the designated value of *Recreation*. The 1977 CRMP closed many trails along the lower river in order to improve opportunities for solitude of the paddlers; this action limited hiking access. In addition the USFS requested that the DNRs stop stocking fish along the lower river to avoid conflict with anglers³¹. Collectively, these two management decisions displaced hikers and anglers, while giving preferential treatment to paddlers along the Lower Chattooga. Further diminishment of the Outstanding & Remarkable Values for hikers and anglers continues with the 2009 policy amendments, this incremental degradation of protected values violates the section 10 (a) of the Wild and Scenic Rivers Act.

³⁰ [16, 28 § 1281] “ *Each component of the **national** Wild and Scenic Rivers **system** shall be administered in such manner as to protect and enhance the values which caused it to be included in said system*” The language of this statute, **component of the national system**, does not subdivide the designated Chattooga into smaller segments than its entirety. Policy for the entire designated Chattooga requires assessment; policy based on isolating recreational assessments into boater-defines segments is arbitrary and capricious. What if the ATV lobby could demand a trail-by-trail NEPA assessment of all public lands while demanding planners ignore trails already open to motorized vehicles?

³¹ Dan Rankin’s testimony revealed that “*Highway 76 was a particular stocking site that DNR was asked, by letter from the District Ranger, to stop stocking in order to control conflicts between boaters and anglers. ...as long as the trout were scarce, fishing would cease in that area and conflicts would be cut down.*” Chattooga History Project 2006

The table below outlines paddling availability within the Chattooga watershed.

Chattooga Watershed Sections * Proposed for WSR	Paddling River Difficulty Miles	Boating Policy 1976 – 2009	Proposed Boating Policy in 2009 Sumter EA
Chattooga Section IV	IV – V 5.2	Unlimited	Unlimited
“ Section III	III – IV 13	Unlimited	Unlimited
“ Section. II	II 7	Unlimited	Unlimited
“ Section I	I – II 5	Unlimited	Unlimited
Overflow Creek*	V 2	Unlimited	Unlimited
Holcomb Creek*	IV – V 2	Unlimited	Unlimited
Chauga 1 Verner Mill	II-III(IV) 3	Unlimited	Unlimited
Chauga 2 Route 193	II-III(V) 5.4	Unlimited	Unlimited
Chauga 3 Route 290	II-III(IV) 9.8	Unlimited	Unlimited
Chauga 4 Cobbs Brdg	II-III(IV) 7.5	Unlimited	Unlimited
Upper Chattooga			
Hwy 28 to Burrells Ford	III – V+ 10	No Boats	No Boats
Burrells F. to Bull Pen	III – IV 5.7	No Boats	>450 cfs in Winter
Norton Mill to Bull Pen	+ 2.4	No Boats	>450 cfs in Winter
Above Norton Mill	V+ 4	No Boats	No Boats
Total Miles	86	65	72

Counter to complaint by their access lobby, Paddlers already had unlimited access to 75% of the watershed . The 2009 plan amendments provide an additional seven miles of boating during the winter when fewer existing visitors are at the resource. The proposed agency policy would increase private boating access from sixty-five (65) of the eighty-six (86) boatable miles within Sumter’s *Management Area #2*, up to seventy-two (72) miles (see chart).

The public record is filled with ignored requests for the USFS to include the Lower Chattooga and nearby watershed in the recreational assessment. These requests are listed below.

10-13-2005 First Public meeting: *“The study ought to analyze river use below 28. How is that working out? What is happening on overflow creek?”* ref pg 6 USFS published public comments for 10-13-05 meeting

4-11-06 Letter from FOTUC to USFS: *“By this letter, the undersigned groups urge the USFS not to overlook the obvious, but to include in its analysis an examination of the historic impacts of boating below Highway 28. We believe that the USFS will find valuable evidence in such examination that would help the USFS to decide how boating above Highway 28 would effect the environment and the protected Outstanding Remarkable Values of hiking, camping and fishing, and thus whether the USFS should allow boating above Highway 28”.*

10-24-2006 letter from FOTUC to USFS: *“The process outlined in the implementation documents makes scant effort to study, analyze or assess what is already going on this river, downriver from the Route 28 bridge. This is a key baseline determinant that could provide valuable information for this study. Not to do so is clearly biased, arbitrary and capricious. The growth of whitewater boating activities on the lower reaches of this river has impacted all visitors, has displaced most non-boaters, has resulted in recreational conflicts (anglers vs. boaters, private boaters vs. commercial boaters, and boaters vs. horse riders) in addition to decreased opportunities for remoteness and solitude with significant bio-physical impacts.”*

4-2-2007 AW letter to USFS: *"It should be explained that a significant portion of the Wild and Scenic Chattooga River was not studied by the Forest Service, its consultants, or the expert panels of anglers and boaters."* pg 9

5-3-2007 FOTUC letter to USFS: *"the Friends of the Upper Chattooga urged the Forest Service to evaluate the objective, historic evidence of how boating has already impacted the environment and various types of recreation that make up the protected Outstanding Remarkable Value of Recreation on the portion of the river below Highway 28. Unfortunately, the Chattooga Friends have seen little evidence of a concerted effort by the Forest Service to evaluate this objective historic evidence."* Pg1-2

9-11-2007 FOTUC letter to USFS *"the focus of AW and the USFS on only the 21 miles of river north of Highway 28 is quite similar to the argument of off-road vehicle riders, mountain bikers³² or horseback riders that they should have access to 100 percent of a trail system in a Wild and Scenic River or national park area, even if that activity will harm other uses of the trail system. Federal courts have routinely rejected such claims. See, e.g., Bicycle Trails Council of Marin v. Babbitt, 83 F.3d, 1445, 1461 (9th Circuit 1996) (upholding as reasonable agency decision that limited bicycle access to over 64 percent of the parks trail system and the agency's conclusion that "experiences that will remain available to cyclists are numerous and varied"). See also, Northwest Motorcycle Association v. U.S. Department of Agriculture, 18 F.3d 1468 (E.D. Wash. 1992) (banning off road vehicles from a particular area to reduce actual and/or likely user conflicts was neither arbitrary nor capricious).*

7-30-2008 FOTUC letter to USFS : *"Scope: The best approach would have been for the Forest Service to have conducted a recreation study of the entire Wild and Scenic River portion of the Chattooga River, which would have shown that current policy provides a diverse blend of recreational activities in numerous settings. The Forest Service's decision on American Whitewater's 2004 appeal directed the Sumter Forest Service to consider "the diversity of river recreation opportunities available within the geographic region." The Draft EA's Recreational Review (section 3.3-1) remains focused on the Upper Chattooga and continues to narrowly define social impacts within the headwaters only. Zoning boating to the majority of the River (the portion below Highway 28 and the West Fork watershed) remains the best option for protecting the environment and enhancing the remarkable recreation opportunities available in the Upper Chattooga."*

9-12-2008 GA Forest Watch to USFS: *The narrow scope and segmentation of the project present a misleading view of recreation opportunities in the region. The regional reality is that boaters have near universal access to rivers and creeks in the Southeast and nationwide. There are few places other than the Upper Chattooga where anglers, hikers, birders, hunters, swimmers, nature photographers and solitude lovers can enjoy a boater-free experience.*

08-18-2008 Letter from AW to USFS *"The EA fails to analyze the entire length of river"*

Request for Relief:

Insure that All Future Chattooga Recreational Assessments and Adaptive Management must...

- **Inventory the array of river recreational opportunities within the geographic area including all three effected forests. At an absolute minimum, recreational opportunities throughout the entire Chattooga Watershed must be assessed before changes are made.**
- **The past trends of displaced river visitors, as a result of boating, must be included within this and future assessments; these displacements should be considered as forgone recreational opportunities for the non-paddlers.**

The Kayak lobby should never again be allowed to segment review of the recreation based on geographical zones established to balance and distribute overall recreational use.

³² AW similarly cast the "Headwaters" as a region separate from the rest of the Wild and Scenic River. What AW term Headwaters is simply the upper portion of one branch of the Chattooga River. Boaters have access to the 15-mile stretch of headwaters that is the Chattooga West Fork and Overflow creek. Thus, Plaintiffs' claim that they are "completely banned" from the Headwaters is as much of a misnomer as the rest of their rhetoric. What they simply ask for is 100 percent of everything, anything less than that is in their eyes unlawful, even if it means other uses are substantially harmed or effectively eliminated.

III. The Benefits to the OR values created by the Current Policy Remain Undocumented :

As incorrectly argued by the kayak lobby, the Environmental Analysis did not have to determine if the limits on boating, properly promulgated decades ago³³, was the correct policy. The Environmental Analysis should have compared the impact of any revised policy against the environment created current policy. The assessment was supposed to determine if expanding paddle-sport would diminish the *protect and enhance* mandates associated with the outstanding and remarkable values and “special attributes” currently available on the Chattooga. Only by avoiding assessment of effects to the social environment could the USFS possibly justify the published FONSI and circumvent the EIS process.

36 CFR § 219.7 mandates previous management plans “*provide the basis for future agency action.*” Therefore the existing floating restrictions and associated benefits to current users, establish the baseline for comparison to any policy revision. Agency guidelines require plans to “*Describe the history and social characteristics of the analysis area as a point of departure for estimating social effects of management alternatives.*” [FSM 1973.4] In order to alter the current policy, the USFS must prove why the 30-year-old limitations are no longer necessary to protect the social, environment and O.R. values³⁴.

The agency is responsible for comparatively evaluating resource and social impacts amongst alternatives³⁵ including the status quo or “no action” alternative. Circumspectly, current visitor preferences collected during the Chattooga capacity analysis was omitted from the final EA. Although “balancing activities” is the responsibility of the USFS, a comprehensive and transparent comparative-analysis against current policy is legally required¹¹ to properly assess proposed alternatives.

The Chattooga analysis was supposed to review what social, biophysical and economic impacts expanding kayaking upriver would have on the current environment.³⁶ Instead the two-year Chattooga analysis conducted a recreational flow study (using the kayak lobby’s methodology and recommended consultant) designed to determine when kayaks and anglers would use the river. This recreational flow study only proved that water levels do not separate boaters from anglers and provided little insight –in fact avoided review- of assessing impacts from kayaking during the comparative analysis.

³³ The USFS explain that policy was “ **properly-promulgated** ” in AW v USFS Case 2:06-cv-00074-WCO, Document 11 Filed 07/07/2006 pg 2-4 Judge Kelly agreed in the published dismissal.

³⁴ [5U.S.C. §556(d); Minn. Milk Producers Association v. Glickman, 153 F.3d. 632, 642 (8th Cir. 1998); supra n.12.]

³⁵ 40 CFR§ 1502.14 “ *present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.*”

³⁶ 36 cfr§**219.12** h) “evaluate the significant physical, biological, economic, and social effects of each management alternative” ..compare the aggregate effects of the management alternatives against the present net value, social and economic impacts.”

Wild & Scenic River guidelines clarify the “management implications” of section WSR 10(a) as follows... “this section [10(a)] is interpreted as a non-degradation and enhancement policy for all rivers...The river manager must seek to protect existing river-related values and, to the greatest extent possible, enhance those values.”³⁷ These same guidelines also suggests, “*eliminating adverse impacts on values including activities that were occurring on the date of designation.*” Given that hikers and anglers found boats in compatible³⁸ with their desired experience, and the historical record documents these conflicts, the continuation of the zoning policy established with the original river management plan should have been continued.

Hikers have been most hard hit under the revised decision. Trails along the lower Chattooga were designed to minimize hiking access to the river in order to provide boaters with a wilderness experience; this policy was established even though hiking along and to the river is a protected designation value. Now thirty years later, a new decision to close trails and campsites in order to mitigate impact from new boating use along the riparian zone, further erodes the balance to optimize activities protected under the recreational ORV. Additional boating does not *insure all users have equitable access to the river for all users*, rather it preferentially grants more access to boats while further degrading opportunities for hikers, swimmers and solitude seekers.

The EA must transparently compare proposed policy against current policy, and for a capacity analysis this includes the quality of the visitor experience available prior to expanding boating. The non-diminish mandates associated with existing Upper river-related values compared objectively against further expanding a conflicting activity (kayaking) cannot be discounted during planning or under an objective NEPA. Similarly, before expanding motorized craft along the lower Chattooga, the recreational values associated paddlers must first be considered. Without an objective assessment that includes all visitors and associated use trends, EA remains deficient.

Request for Relief

- 1. Prior to potentially destroying the benefits resulting from the long standing policy, capture all relevant baseline data. Wait until complete BEFORE granting a boatable day.**
- 2. Objectively document the effects boating has on the protected values of hiking and angling under past and current management policy. Include this within the adaptive management before continuing to expand kayaking with blatant disregard for other visitors.**

³⁷ Pg 26 *Interagency Guidelines for Managing Wild and Scenic Rivers*, 2004, WSR Coordinating Council.

³⁸ Pg 4 of the Sumter 2009 Decision references a 1971 statement regarding the compatibility of some recreational activities with the WSR designation, this is then misused a few paragraphs down to suggest the recreational activities are compatible with each other.

Additional Legal considerations for the above argument

- 36 CFR § 219.12 h) “ *The evaluation shall include a comparative analysis of the aggregate effects of the management alternatives and shall compare present net value, social and economic impacts, outputs of goods and services, and overall protection and enhancement of environmental resources.” The EA should be a comparative analysis using the “present” as baseline for comparison social and economic outputs for recreational opportunities; this has not been done.*
 - 42 USC § 1502.14 “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.” “(b) evaluate their comparative merits.” ... “(d) Include the alternative of no action.”
 - FSM 1973.4 “Describe the history and social characteristics of the analysis area as a point of departure for estimating social effects of management alternatives.”
 - “*Before it [USFS] considers changing management policies that have been in place for over 30 years, the Forest Service must analyze the potential ecological and social impacts of doing so*” AW v USFS, 2:06-cv-00074-WCO Document 11 Motion to Dismiss by USFS Page 18 . 07/07/2006
 - The WSR governing law is that “primary emphasis shall be given to protecting its esthetic, scenic, historic, archeological, and scientific features [16:28 § 1281(a)] and that “with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter, the more restrictive provisions shall apply” [16:28 § 1281(b)]. That the Chattooga analysis' primary focus was on recreational capability and against protecting the riparian habitat and scenic values goes directly against congressional mandates and Forest Service guidelines for WSR management.
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V: The Assessment of the Quality of the Current Visitor Experience Remains Deficient.

Wild and Scenic Rivers Management Guidelines define visitor capacity as “*the quantity of recreation use which an area can sustain without adverse impact on the outstandingly remarkable values and free-flowing character of the river area, the quality of the recreation experience, and public health and safety.*” (47 FR 39454, Sept. 7, 1982)³⁹. The quality of the experience for the majority of Upper Chattooga visitors was either completely ignored in the analysis, or in the case of angling values, defined using a biased flow study methodology published with the support of the kayak access lobby. Without objective assessment of the effects expanding boating will have to the quality of current recreational users, the EA remains deficient and the FONSI premature.

The Decision for Appeal [#04-13-00-0026] directed the Forest Service to “*conduct a visitor use capacity study*” and to “*involve affected parties.*” The Visitor Capacity Analysis documented that many anglers and hikers were displaced as a result of Chattooga boating in the 1970s⁴⁰. By avoiding a homogeneous management policy, the USFS provided varied and equitable access for a variety of users, in a variety of settings, during all time periods.

The Forest Service argued that “*Before it considers changing management policies that have been in place for over 30 years, the Forest Service must analyze the potential ecological and social impacts of doing so*” ... “*the historical management record of the Chattooga from 1971 onward clearly indicates*

³⁹ This definition of visitor capacity for WSRs is also included within the Forest Service Manual FSM 2354.2.

⁴⁰ Pg 13, 2009 EA

that floaters and other recreational users, including trout fishermen, hikers, swimmers, and sightseers, wish to use the river and experience the area in ways that may significantly conflict." USDA:OGC[AW v. USFS (2006) Case 2:06-cv-00074-WCO Doc 11 pg 18]. However, the Forest Service has appeared to have ignored its' judicial argument, which argued for the need to assess the social impacts prior to revising Chattooga policy. In place of an assessment, the USFS outsourced the analysis to the kayak lobby's preferred consultant, and accepted the biased analysis as fact.

The documentation and analysis of social conflicts that may be significant is required under NEPA [40 CFR § 1500.1(b)]. A FONSI without an objective assessment of these social impacts is premature.

A. Visitor data has been arbitrarily and capriciously excluded from the Final EA.

The 2004 Appeal Decision directed the Forest Service to "*involve affected parties in the design and execution of the capacity analysis*"; non-paddler visitor data was at first collected and published in December of 2005. The survey determined non-paddlers were overwhelmingly against further expansion of paddling. After collecting Chattooga visitor preferences during a 2005 public meetings, the USFS published that the majority of the current visitors preferred to experience the river without boats.⁴¹ For reasons still unclear, the USFS has not included this public input within the final EA; this action essentially eliminated visitors preferences collected during the Capacity Analysis and replaced them with assumptions and opinions that run counter the data collected. Filtering and discarding data arbitrarily does not meet statutory guidelines for planning under 36 CFR 219.21(2)⁴² and is against management guidelines outlined under FSM 1020.2 and FSM 2350.2⁴³ Replacing collected Chattooga visitor preferences with assumptions and hypothesis that runs counter to the on-site findings, shows an extreme level of bias and does not meet the objectivity standards required for a NEPA analysis.

Visitor preferences are site specific, remote opinions are not relevant. The USFS published that "*Acceptable levels will vary from area to area. Therefore, the manager must have data on what the general visitor's perceptions of appropriate crowding and contact levels are for a given area. The manager also needs information on existing levels of use, crowding, and congestion as well as on demographic characteristics of the visitors. With this kind of basic data the manager can begin to make reasonable decisions on use and management of backcountry areas*"⁴⁴ One study⁴⁵ found "crowding" indicators vary by site and by type of visitor. The finding is of no surprise; a visitor to New York's

⁴¹ *Public Comments: Indicators and Desired Conditions*, 12/1/2005, Upper Chattooga River Third Public Meeting, USFS

⁴² 36 cfr 219.21(2) "Forest planning shall identify the recreational preferences of user groups and the settings needed to provide quality recreation opportunities" 36 cfr 219.21(2) refer to 36 CFR 219.21 (f) and (g).

⁴³ **FSM 1020.2** "To carry out its mission, the Forest Service [I]listens to people and responds to their diverse needs in making decisions." **FSM 2350.2 "Provide opportunities for a variety of recreation pursuits"**

⁴⁴ Page 55, USDA forest Service, 1981 NC-63 River Recreation Research

⁴⁵ Botkin, M. A. (1985). Crowding tolerances and preferences for climbers at Seneca Rocks, West Virginia: A comparative study.

central park would understandably have different crowding standards than a visitor to our arctic preserve. Use of visitor encounter preferences collected away from the Chattooga may have been useful, if no Chattooga visitor preferences existed. However, after having already collected preferences from Chattooga visitors, the hired recreational consultant –recommended by the kayak lobby- opted to cite contradicting remote studies over the collected Chattooga data; this appears highly prejudicial and the publication within the EA is an abuse of agency discretion

36 CFR 219.12 requires that in "*formulation and analysis*" of management alternatives the agency must examine "*interactions among recreation opportunities*" and "*examination shall consider the impacts of the proposed recreation activities on other uses and values and the impacts of other uses and activities associated with them on recreation opportunities, activities, and quality of experience.*" The USFS need not speculate about social impacts to foot-travel visitors after having collected these "desired conditions" and encounter preferences as part of the ordered Chattooga Visitor Capacity Analysis. Unfortunately, through some "creative" encounter assumptions and a blatant disregard for current visitors and wildlife, the assessment avoids assessment of the majority of Chattooga visitors and selects encounter standard out of thin air without consideration of current conditions.

Under WSR statutes, the authority to manage the resource is granted to the agency under [16:28 § 1281(a)]: "*Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.*" This exact statement is repeated in the 1982 published WSR Interagency Guidelines which direct public use "*be regulated and distributed where necessary to protect and enhance... values of the river area.*" By granting the USFS this authority, Congress expects that the agency will objectively assess "regulating and distributing where necessary" activities (like kayaking) in order to manage a Wild and Scenic resource to accommodate a variety of uses. Congress expects the agency to manage both the Lower and Upper Chattooga for a variety of uses so that impacts between conflicting activities are minimized.

FSM 1973.5⁴⁶ outlines how to develop a social impact analysis and the need to incorporate social effects in developing and analysis alternatives. The agency guideline specified that the "No action", or current policy, be the alternative that all other alternatives are measured against. Since the baseline policy is currently "no boats", the social effect of each alternative that allows boats must be analyzed and evaluated against a boat-free resource. This effects analysis includes **social** and **economic**⁴⁷ impacts as well as wildlife disturbances that indirectly impact activities.

⁴⁶ FSM 1973.5 - Estimation of Social Effects. *Include an analysis of the social effects of the base (no action) alternative that follows current policies and practices and a comparison of the effects of other management alternatives.*

⁴⁷ 36 CFR § 219.10 (a)

In an assessment of river recreational conflict at Yellowstone, park managers found that *“Boating park rivers presents a high potential for conflict with other user groups whose enjoyment relates directly to seeing a portion of Yellowstone which is still largely undisturbed – the riparian zones and their relative native inhabitants.”*⁴⁸ Yellowstone’s rivers remain boat-free today and protected from the associated overuse. The EA’s failure to include Yellowstone’s Boating Assessment within the literature review highlights a bias, especially since the assessment was provided to the Chattooga team in 2006 for consideration and review.

Jerome Thomas for the USFS stated in his February 2006 press release that that *“Before making that final decision, we feel it is important to collect site-specific information about flow levels and the solitude experience many recreation users have told us is important to them... Conducting focus groups, researcher-led discussions among small numbers of people representing different user groups. [and] Conducting a comprehensive, statistically valid user survey.”* [FMS0603].

Unfortunately, the only visitors considered during assessment were boaters and to a lesser extend anglers.

Request For relief:

Include assessment of the effects FROM the additional boating TO foot-travel visitors before initiating changes under an adaptive management plan.

B. The Assessment of Effects to Day Hikers was Disregarded:

Hiking is a protected Outstanding and remarkable value which includes hiking to the river and enjoying unspoiled views of the river. However, erroneous assumptions regarding hikers were used to flippantly dismiss the assessment of this group which represents the majority of current and future users. According to Sumter’s 2004 FEIS, kayaking has the lowest participation rate of all assessed recreational user at 3% ; cold-water Angling participation is at 14%.⁴⁹ The majority of activities(Birders-32%, swimmers-46% wildlife viewers-45% or day hikers-29%)⁵⁰ were not studies nor were impacts to these groups from adding boating assessed within the EA. The published FONSI was a direct result of underestimation and questionable documenting the indirect and cumulative effects boating would likely have on protected hiking values.

History: For hiking along the Chattooga, the designation literature noted *“Hiking provides another way of seeing the river. ... [M]ost of the shoreline is accessible to those hikers willing to test themselves against the rugged country.”*⁵¹ The 1971 Study adds *“In hiking, a variety of experiences is*

⁴⁸ pg 45 *Boating on Yellowstone Rivers; an Analysis and Assessment*. NPS., April 1988

⁴⁹ 2002 South East Research Stations Participation Survey published by the USDA

⁵⁰ 2002 South East Research Stations Participation Survey published by the USDA

⁵¹ page 22, 1971 Chattooga Wild and Scenic River Study, USDA

*offered along the scenic and primitive areas on the Chattooga. Related activities to hiking include nature studies, photography, sight seeing, hunting and fishing. In most cases, the hike is necessary in order to fulfill either one of these activities.”*⁵² Obviously, while experiencing the river, hikers will also encounter the boats floating along the river.

When discussing hikers the Sumter 2004 FEIS noted “*Rivers tend to be human attractors. People enjoy the sound of water, views, and the ease of access to the water itself* (pg H-9). The FEIS continued, “*The river is the primary attraction of the trails and sites in the corridor, where visitors look to commune with nature and the river, view the gorges and rapids, take a dip in the cool water, and experience solitude. Opportunities to experience the latter are becoming a rarity.*” (pg H-10) By ignoring hikers along the water’s edge, the USFS has also ignored assessing the impact each alternative will have to these “affected users” as they were directed to consider within the Appeal Decision and under planning mandates.

The Current EA first acknowledges that dispersed hikers “*prefer to recreate in or near bodies of water*”⁵³ and the VAC collected desired conditions of Chattooga hikers who *appreciated a river experience* without the interruption of boats”⁵⁴ Regrettably, the EA then dismisses the hiker to boater encounters, while boaters are floating along the river. In fact through some very “creative” and misguided assumptions, encounters of Chattooga hikers were first excluded from the flow studies, than later from the Environmental Assessment, and finally from encounter counts being used in adaptive management.

i. Encounter Standards

Encounters between floaters and hikers are mistakenly ignored based on false assumptions carried forward by the recreation specialist from a biased conflict analysis conducted by American Whitewater’s preferred consultant. Most hikers are at the river –*on* or *along*– for over 50% of the time they visit the Upper Chattooga, during this time they have a high likelihood of encountering a boater on boating days. Even the 2009 EA notes that “*the prohibition [on boats] provided an area where people could “fish and hike without encountering boating traffic”* (Craig et al. 1979)”,⁵⁵ clearly an Upper Chattooga without boating offers greater opportunities for solitude for hikers and zoning policy was considered beneficial until the kayak lobby whined about not having the entire Chattooga.

During the 2005-07 Chattooga LAC analysis the USFS included swimmers, picnickers, wildlife viewers and waterfall viewers under the day hikers. The 2005 LAC noted these recreationalists enjoy “*waterfalls and clear water crashing over and around massive boulders.*”⁵⁶ It added that” *these groups are more*

⁵² Pg 149, 1971 WSR study

⁵³ Pg 35 2009 Chattooga EA USFS

⁵⁴ December 2005, LAC Data Chattooga visitors desired conditions.

⁵⁵ Pg 113, 2009 EA

⁵⁶ 2005 data collected for visitor preferences published December 01, 2005, USDA.

accepting of encounters with other groups or individuals along the trail than they are at attraction/destination (eg waterfalls , river)” It is clear that the river itself is the destination for many hikers (especially swimmers, picnickers and waterfall viewers); that hikers are incorrectly eliminated from the Assessment’s encounter standards indicates the bias within the assessment and a premature FONSI.

The Chattooga Capacity analysis determined that *“activities such as hiking, camping, walking, biking, wildlife observation, photography and similar riverside recreation can often occur along a river regardless of the flow, but [higher] flows may enrich the experience with aesthetic benefits. (Brown, 1991; Whittaker, 2002)”*.⁵⁷ Therefore unlike anglers, hikers will more likely be attracted to the river during periods of higher (boatable) water; although the selected alternative does restrict boating during the more visited hiking times, the EA has not documented the significant increase in encounters that would result in all other alternatives. The EA excludes boater-hiker encounters on the river by ignoring that the majority of hiking visitor time is spent along the river when visiting a Wild and Scenic River; one flippant comment regarding hikers being on the river “less than anglers” was apparently used to once again ignore hikers.

36 CFR § 219.21(2) requires that *“Forest planning shall identify the recreational preferences of user groups and the settings needed to provide quality recreation opportunities”*. The EA first ignored the LAC collected data and then avoided assessment of hiker encounters.

Relief Sought:

Include hiker/boater at-river encounters within assessment, similar to anglers.

ii. Riparian Trails:

In order to mitigate the impact from new boating trails in the riparian zone , the EA offers closure of hiking trails and campsites to offset these expected new impacts.⁵⁸ The new policy closes hiker access in order to accommodate boaters; this does not accommodate visitors equitably.

Page 50 of the 2009 E.A. outlines proposed trail closures under Alternative #1 (without any boating) *“Implementation of current forest plan standards and compliance with BMPs or similar soil and water conservation practices designed to limit erosion, sediment and other water quality impacts would reduce the current adverse effects to soils from user-created and designated trails, campsites and parking areas over time through site-specific projects.”* These hiking trail and campsite closures are essential for the Forest Service to comply with existing standards, but the net effect will be fewer campsites and new access restrictions on foot travel visitor. Alone, compliance with standards will likely improve conditions, but the EA adds that *“However, these improvements may be counteracted*

⁵⁷ sec 3.1.1 Chattooga River; Literature Review Report, Lois Berger group, 2007 USFS part of the LAC

⁵⁸ Pg 54 of the 2009 EA

by continuing increases in overall use that create new biophysical impacts[before considering any new boating].” Therefore, any additional trails required for boating will only INCREASE the cumulative erosion problems.

The EA continues, new riparian trails will be required for boaters and these will be “designated and designed”. However, the exact amount, location and number of these new trails is not described within the EA; In order to determine if these new trails may be less, or significantly greater than the quantity of hiking trail closures, is still an unknown. Without documenting the trail closures, that will directly impact hikers, and without knowing the extent to which boaters will impacts riparian zones, the EA remains deficient. The proposed agency action -that requires new boater trails- is not being assessed objectively, because the cumulative impact of the action is not being considered as required. [40 CFR § 1508.7] Specifically, the cumulative impacts that the required trail system will have on the hiking experience and on sedimentation remains incomplete.

C. **Wildlife Viewing :** The EA acknowledges that terrestrial wildlife will be displaced as a result of boating, but the indirect effects to the wildlife-viewer is not considered. Displacement of wildlife will result in either a displacement of the viewers, or a diminishment of that recreational value. This diminishment is a violation of the *protect and enhance* mandates associated with the protected designated value of wildlife-viewing.

D. **Swimming:** A policy, that limits boating to the Winter, is unlikely to effect the protected value of swimming. However, through the proposed adaptive management, incremental changes to management policy could eliminate seasonal limitation; for this reason the current EA remains deficient in evaluating swimming values during other seasons because no data was collected.

Page 126 of the EA suggests swimming will happen at *lower flows*, when boaters are not present. This is based on a CRCs comment within the 2007 *Capacity and Conflict Analysis*. However, CRC’s 2006 *Flows & Recreation*: guide suggests swimming will be more popular during higher flows, not during low flows as purported in the 2009 EA, see below

“Flows affect depths, velocities , and water quality, important attributes for swimming. Less swift flows may be better for children or less skilled swimmers, but lower flows may be too shallow or appear stagnant.” Pg 4, CRC’s 2006 *Flows & Recreation* guide

“Swimming areas on many rivers include “jumping rocks” that require adequate pool depths for safety.” ... “General riverside recreation is usually “enhanced” by flows rather than “dependent” on them.” Pg 19, CRC’s 2006 *Flows & Recreation* guide

The deficiencies in the EA should be corrected prior to considering additional boating during the swimming seasons under possible adaptive management policy changes

E. The angling assessment is misguided, confusing and in some cases disingenuous.

The conflict between boaters and anglers is easy to understand, paddling crafts spook the fish anglers are attempting to catch. Unfortunately the EA has avoided documenting the actual cause of conflict but has introduced encounter standards based on “solitude”. Given that “solitude” would be a “primary emphasis” value and protected above new demands for recreation under the WSR act, this premise is equitable, so long as lower Chattooga policy and associated opportunities are included in future management decisions.

The collected angling preferences and actual use data has been replaced by hypothesis. I have included some of these elements in section I and in the fishing appendix. However in addition to the points mention some additional deficiencies still exist.

- a. The DNR angler surveys 1987-1989 and 1999-2000 *provide useful estimates* according to the Data collection implementation plan⁵⁹. : Creel census efforts for the Upper Chattooga (e.g., roving creel observations in 1987-1989; front country angling surveys in 1999-2000 and 2004-2005) provide useful estimates. CRC ignored this actual use data considered to be useful and proceeded to use anecdotal surveys to predict angling flow preferences.
- b. The only long-term recreational study on Chattooga angling indicates fishing the Upper Chattooga is present for most of the year and at most all water levels.⁶⁰ The recent USFS Chattooga analysis concluded that *“The angler panel members indicated that the high end of optimal fishing was, about 3.0’ [700cfs at BF], for spin/bait fishing.”*⁶¹ The actual data collected Chattooga within the 2007 recreational analysis indicates optimum flows for spin fishing range as high as 2.8’[625cfs], yet EA mistakenly depicts the optimal angling range to be completely below 325cfs. This false data is then used to make conclusions about potential fishing and anglers conflicts that significantly underestimate the overlap period between angling and boating.
- c. The F.S. hydrology report as published stated published that during the growing season, *“ a boater might require a starting flow of closer to 450cfs to assure at least 225cfs remains in the channel as the hydrograph descends.”*⁶² The flashy hydrology associated with the Upper Chattooga will not segregate users during the growing season if adaptive management considers expanding boating outside of the Winter season.
- d. American Whitewater also considers CRCs data flawed. AW commented that *“Flow information will, by design, be inadequate for future management decisions. The opinions of 5-8 individuals running (or fishing) a river under highly artificial conditions, one, two, or three times is an inadequate basis for decisions regarding the management of a Wild and Scenic River.”* AW letter to USFS 08/02/2006 signed by K. Colburn.
- e. Separation of conflicting users was the primary justification for the North Fork boat restrictions in 1976, 1977, 1980 and 1985⁶³. These protective restrictions were implemented **after indirect efforts** (no policy) failed to protect anglers from conflicts caused by whitewater floating. Page 4 of the Sumter decision references a 1971 WSR Study Report statement regarding the “compatibility” of some

⁵⁹ Pg 7 *Upper Chattooga River Visitor Capacity Analysis: Implementation Plan for Data Collection Methods*, USDA, October 2009

⁶⁰ The 1989 GA DNR report and the 1999 SC DNR Angler Survey documented fishing up to and above the 98% water level.

⁶¹ Pg 20 *Upper Chattooga River: Expert Panel Field Assessment Report*; Sumter USFS 2007

⁶² p. 11, *North Fork Chattooga River; Streamflow Character*. Hansen 2007

⁶³ Pages 4-7 *Motion To Dismiss* [AW v. USFS] Case 2:06-cv-00074-WCO Document 11 Filed by USFS 07/07/2006

recreational activities with the WSR designation, This statment is then used misleadingly in a paragraph below to suggest that all recreational activities are *compatible with each other*.

- f. The 1971 WSR study report noted that “*fishing accounts for most recreation use*”⁶⁴ and the 1973 senate report indicated “*fishing [was] probably the number one attraction to the river*”⁶⁵. Today quite the opposite is true as anglers represent less than 2% of the lower Chattooga visitors according to the 2002 NPS report, while whitewater floating has grown to 94% of the visitors to the lower River⁶⁶. Angling went from being the single most popular recreational activity on the entire river to being a footnote on the lower river because management policy allowed unlimited growth in whitewater sports.
- g. “*In a number of cases the federal courts have upheld [WSR] managing agency's decision on balancing competing river segment uses so long as those decisions are not arbitrary or capricious. For instance in US v. Garren 893 F.2d 208 (9th cir 1989) the court upheld balancing commercial vs. private floater needs. Also the court upheld in St. Croix Waterway Association v. Meyer, 942 E. Supp 435 (D. Minn. 1996) the limitations added to motor boats on WSRs ... In Niobrara River Ranch, LLC V. Huber 375 F.3d ,885 (8th cir 2004) “the court noted that “mere disagreement with an agencies decision to limit river use does not render the Services decisions arbitrary and capricious.” pg 13, Natural Resource & Environment, Vol 20, # 2, Fall 2005*

During AW’s 2006 lawsuit against the USFS, the USFS warned the Federal Court : “*Without the proper environmental and social data that the visitor use capacity analysis and environmental impact statement or environmental assessment would fully analyze, the agency would potentially violate NEPA*”⁶⁷. The USFS has not “fully analyzed” non-paddlers and as claimed has violated NEPA.

Request for Relief:

**Correct EA deficiencies, and footnote areas of uncertainty in the final decision.
Consider the deficiencies listed above prior to making incremental changes under
adaptive management.**

-
- Other Legal references indicating the need to consideration of ALL visitors.
 - WSR management activities should plan for the “*Desires of the present and potential recreation users and trends over time in the amounts, types, and distribution of recreational use and the characteristics of recreation users. These help identify what kinds of recreation opportunities to provide and how and where to manage and maintain such opportunities.” FSM 2354.41*
 - 36 CFR § 219.10 (a) Sustainability, for any unit of the National Forest System, has three interrelated and interdependent elements: social, economic, and ecological. The overall goal of the social and economic elements of sustainability is to contribute to sustaining social and economic systems within the plan area. To understand the social and economic contributions that National Forest System lands presently make, and may make in the future, the Responsible Official, in accordance with §219.6, must evaluate relevant economic and social conditions and trends as appropriate during plan development, plan amendment, or plan revision.

⁶⁴ p. 22 Chattooga WSR Study Report, June 1971, USDA

⁶⁵ p 3010, P.L. 93-278 senate report for the Chattooga WSR.

⁶⁶ pg 20, *The Chattooga River Study* 2003, published by American Rivers and the National Park Service

⁶⁷ AW v. USFS Case 2:06-cv-00074-WCO Doc 11, M.T.D. by USFS Page 23

- Agencies are required to make diligent efforts to involve the interested and affected public during NEPA (1506.6), regardless of the level of impact. Agencies must also “encourage and facilitate public involvement in decisions which affect the quality of the human environment” (1500.2 (d)).
- National Forest Management Act (16 U.S.C. 1600) Sec. 2 (1) *The Congress finds that the management of the Nation's renewable resources is highly complex and the uses, demand for, and supply of the various resources are subject to change over time.* Although the original justification for Chattooga boating limitations were to protect angling, the USFS cannot ignore that the Ellicott Wilderness and Upper Chattooga has become a preferred destination for nature enthusiast, campers and solitude seekers. By not including all visitor expectations in the current environmental conditions, the USFS violates the mandates outline under NFMA.
- On managing WSRs: “*In a number of cases the federal courts have upheld [WSR] managing agency's decision on balancing competing river segment uses so long as those decisions are not arbitrary or capricious. For instance in s US v. Garren 893 F.2d 208 (9th cir 1989) the court upheld balancing commercial vs. private floater needs. Also the court upheld in St. Croix Waterway Association v. Meyer, 942 E. Supp 435 (D. Minn. 1996) the limitations added to motor boats on WSRs ... In Niobrara River Ranch, LLC V. Huber 375 F.3d ,885 (8th cir 2004) “the court noted that “mere disagreement with an agencies decision to limit river use does not render the Services decisions arbitrary and capricious.” pg 13, Natural Resource & Environment, Vol 20, # 2, Fall 2005*
- Evaluating wilderness access should include *social values*. “*Social values include such things as solitude and, for some persons, freedom from observing those developments that might infringe on the primitive wilderness experience they desire.*” pg 4 “*Wilderness Access Decision Tool*” 1990 USDA.
- “Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.”[16, 28 § 1281] Kayaking through swimming holes, paddling in an angler’s path or disturbing wildlife habitat “*substantially interferes*” with public use and enjoyment of the North Fork. Paddling “values” are already well protected on the lower 2/3rds of the river.
- “*Recreational use of our nation’s rivers is increasing in both magnitude and extent, i.e., the types of recreational activities pursued and the technologies being used. Limitations on WSRs and other federally administered rivers are necessary in some cases to protect resource and social values*” pg 32, *A Compendium of Questions & Answers Relating to Wild & Scenic Rivers*. 1997, BLM; Technical Report from the Interagency WSR Coordinating Council.
- The Forest Service manual directs the agency to “...*plan and manage river recreation in a context that considers the resource attributes, use patterns, and management practices of nearby rivers.*” [FSM 2354.03]. The EA’s review of current use patterns is not clearly outlined.
- FSH 1909.17 directs the agency to “*Develop a broad range of reasonable alternatives that respond to issues, concerns, and opportunities, and that provide a basis for maximizing net public benefit.*” Not increase access for one activity (kayaking) at the expense of all others. (net, not gross benefit)
 - FSH 1909.17 also states “*Assist in formulating alternatives that respond to all important public and agency social concerns. Consider effects on lifestyles, attitudes, benefits and values.*”
- “Diversity also has been rationalized in political terms (Burch 1974). It can be argued that without broad political support, parks and outdoor recreation areas are not likely to be maintained by society at large, and that this support is not likely to be forthcoming if outdoor recreation areas do not serve the needs of a broad spectrum of the population. Therefore, park managers should strive to serve this diversity and not necessarily adhere too closely to the preferences or tastes of any one group or type of visitor.” pg 99, *Diversity in Outdoor Recreation: Planning and Managing a Spectrum of Visitor Opportunities in and among Parks*, Warzecha et al. 2001, USFS Volume 18 • Number 3 2001
- “Recreational use of our nation’s rivers is increasing in both magnitude and extent, the types of recreational activities pursued and the technologies being used. Limitations on WSRs and other federally administered rivers are necessary in some cases to protect resource and social values. Importantly, whether and/or how to restrict recreational use is a key issue in the planning process” pg 32 *A Compendium of Questions & Answers Relating to Wild & Scenic Rivers*. 1997, BLM, Management Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council.
- 75 % of the US people believe that limiting wilderness access if crowding occurs is a positive step toward conservation. 81% agrees to limited use if the resource is being diminished. U.S.D.A. Forest Service & N.O.A.A. National Survey On Recreation And The Environment (2000)

III. Adaptive Management and Monitoring

“The intent of the adaptive management option in the proposed regulation is to allow for possible changes in an action to achieve the desired effect without having to reanalyze the proposal and reconsider the decision.”⁶⁸ Since the Assessment is neither clear nor complete and numerous “findings” within the decision are suspect, implementation of Adaptive Management at this juncture is ill advised [FSH 1909.15 Ch. 10-14.1]

1. History of Chattooga Visitor Capacity

1971: The 1971 Chattooga WSR Study Report published that *“Administratively controlled saturation levels, based on limiting numbers of people to maintain a primitive level of experience, will probably be the most severe limiting factors affecting use of this river. A benchmark system should measure these experience level values throughout the river boundaries”*pg 174 On page 150, The 1971 report added that *“Identifying the recreational resource and the saturation levels of the proposed recreation activities will be the main determinates for recreation planning.”*

1977: The original Comprehensive River Management Plan noted *“To protect and perpetuate the unique qualities of the Chattooga river, a benchmark system may be established to inventory the river’s resources.”* An objective of this benchmark system was needed *“to determine the optimum use of each resource without destroying its’ value.”* pg 29

1985: The Sumter FEIS described Social Carrying Capacity as *“the most difficult and nebulous capacity to set, since recreationalist have a widely divergent perception of crowding.(pg M-9)”* Page M-14 discusses the need to monitor encounters and suggests the use of a simulation to predict encounters.

Now, 40 years later, the USFS is still using “guestimates” to predict visitor capacity. A full LAC process, with public involvement, is designed to establish visitor preferences and visitor capacities, but the sudden interruption of the LAC process terminated visitor involvement, with no public explanation. The LAC was turned into a “recreational flow study” with a literature review. This again pushes a determination of Chattooga norms and capacity further into the future and possibly after more visitor are displaced .

⁶⁸ Pg 43091Federal Register/Vol. 73, No. 143/Thursday, July 24, 2008/Rules and Regulations,

2. Arbitrary Standards:

The NC standards for encounter levels are (listed below) are not considered

Encounters	NANTAHALA NATIONAL FOREST– Applies only to wilderness		
	• Manage use within the specified limits for the following indicators and zones:		
	Number of encounters with other parties:		
	Zone I (No trails)	Zone II (Secondary trails)	Zone III (Primary trails and access points)
	80% probability of 0 per day	80% probability of 3 or fewer per day	80% probability of 5 or fewer per day
	Number of other parties camped within sight or continuous sound:		
	Zone I	Zone II	Zone III
	80% probability of 0 per day	80% probability of 1 or fewer per day	80% probability of 3 or fewer per day

Reduce use when it exceeds the limits on more than 10 days during the peak-use season.

8

The new standards far exceeds the current NC standards. It also exceeds the desired conditions collected from Chattooga visitors during the LAC. According to the LAC process, these conditions are supposed to have been used to set capacity standards. Oddly, how standards were set still remains a mystery to the affected parties supposedly involved with this process.

*The USFS published that “Acceptable levels will vary from area to area. Therefore, the manager must have data on what the general visitor's perceptions of appropriate crowding and contact levels are for a given area. The manager also needs information on existing levels of use, crowding, and congestion as well as on demographic characteristics of the visitors. With this kind of basic data the manager can begin to make reasonable decisions on use and management of backcountry areas”*⁶⁹ Clearly desired conditions collected from Chattooga visitors during the capacity analysis are more appropriate then are standards from remote river locations that were part of a literature review.

3. Attraction sites and Zoned Standards:

The encounter standards exclude BF campground and “bridge areas” but they should not. Encounter of 100 people would certainly diminish the current quality of a Chattooga visit. The NC standards include access points, but suggest a higher limit on encounters at these locations (see zone III standards). In addition to BF campground, other river attraction sites⁷⁰ like Ellicott Rock and Big Bend Falls should match the zone III NC standards.

⁶⁹ Page 55, USDA forest Service, 1981 NC-63 River Recreation Research

⁷⁰ The Upper Chattooga VCA Implementation Plan Oct-2006 was supposed to collect *attraction sites* from expert panel members, However since hikers were excluded from the study no attraction sites were ever denoted.

4. The Encounter Estimates does not treat all users equitably:

- a. Since boating is not possible 80% of the time, encounter standards will never alter current boating policy. Given that boater standards for a wilderness experience already control the majority of the river policy down river, the standard as written is not equitable.
- b. Bull Pen and Burrels Ford have no encounter limits under the proposed standards. This does not consider the current conditions for visitors to these areas. A high-use area similar to NC Zone III standards should be set for these areas.
- c. The quality of a visit for Hikers, swimmers and waterfall viewers is disregarded under the proposed encounter standards.
- d. Wildlife disturbances should be included as encounters; These can be easily modeled using simulation software.
- e. The encounter standards and trail closures should apply to the lower Chattooga and to rivers proposed for WSR designation.

5. The Methodology for Encounter Standards Needs Improvements

Using static probability matrices to predict a dynamic world may provide a rough estimate of encounters, but as presented there are some mathematical shortcomings of the *Encounter Calculator*.

- a. Hiker, swimmer etc. encounters are not considered (see above)
- b. Visitor patterns are assumed to be static and linear. In reality visitor use is dynamic requiring a dynamic model. In fact the only visitor data collected regarding preferred flow levels for anglers and boaters indicate a far more complex function is required to accurately predict encounters
- c. The “estimated probabilities” of encounters are unscientific. Factors requiring consideration include before modeling are
 - i. How/where does each group access the resource.
 - ii. What are their travel routes? Rate/s of travel?
 - iii. How long do they spend at visited sites? Attraction locations?
 - iv. How many visitors are present?
 - v. What is the landscape’s saturation level for various visitors (PPVs)?
- d. The car counts at primary access points are used to estimate the PAOT for an entire reach in the 2007 Estimation Workshop. Given that only 3 lots of the 14 access points to the Chattooga Cliffs reach were considered and that cars are not the only mode of transportation, the PAOT estimate for the Chattooga Cliffs stretch is a complete under estimated and therefore so is the number of encounters.

Twenty years ago, Appendix M of the 1985 Sumter FEIS recommended a computer simulation to measure encounters when evaluating capacity for alternative policies. The current encounter estimation methodology in Appendix D, is antiquated, static and inadequate for modeling encounters within a WSR corridor. Given that encounters standards will be used to set policy for access, and future limitations, the “encounter calculator” in the EA would unlikely be considered a defensible decision maker if/when future policy is reviewed by the judiciary.

Request for Relief:

- a. Return to the LAC process to create the encounter STANDARDS,**
 - b. Do not set standards before analysis of base-line conditions in NC are considered.**
 - c. Include high-use area standards, like in those in NC for Bull Pen.**
 - d. Add a “not to exceed 95% of the time” encounter standard, in order that future policy allows equitable access to all resource users.**
 - e. Utilize a more scientific encounter model that can be validated and with verified variables.**
-